

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KELVIN D. BEARD,

Petitioner,

v.

CASE NO. 2:11-CV-823

CRIM. NO. 2:09-CR-00033

JUDGE GREGORY L. FROST

Magistrate Judge Elizabeth P. Deavers

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

This matter is before the Court pursuant to the remand from the United States Court of Appeals for the Sixth Circuit for the limited purpose of determining whether to reopen the appeal period under Rule 4(a)(6) of the Federal Rules of Appellate Procedure.

Petitioner appeals the October 14, 2014 *Order* of this Court denying his *Motion to Reopen Proceedings* pursuant to Rule 60(b) of the Federal Rules of Procedure. (ECF No. 124). On December 19, 2014, Petitioner filed a *Notice of Appeal*. (ECF No. 125.) Petitioner was required to place the *Notice of Appeal* in the prison mail by December 15, 2014. *See Fed. R. App. P. 4(a)(1)(B), 4(c).* However, the Court may reopen the time to file an appeal if the Petitioner did not receive notice of the judgment or order sought to be appealed within 21 days after its entry; the Petitioner files a motion for extended time within 180 days after the judgment or order is entered or within 14 days after receiving notice, whichever is earlier, and; no party would be prejudiced by an extension of time. *Fed. R. App. P. 4(a)(6).*

Petitioner indicates that he did not receive notice of the Court's *Order* denying his *Motion to Reopen Proceedings* until December 11, 2014. He states that the envelope was time-stamped December 3, 2014. (ECF No. 125, PageID# 563.) He indicates that he sent his request

for an appeal on December 15, 2014. *Id.* Thus, the record reflects that Petitioner filed his *Notice of Appeal* within 14 days after receiving notice of the *Order* being appealed. Further, there is no indication that any party would be prejudiced by granting Petitioner an extension of time for filing the appeal.

The Court therefore, **GRANTS**, the motion to reopen the appeal under Rule 4(a)(6) of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

/s/ GREGORY L. FROST

GREGORY L. FROST
United States District Judge